

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
INYX USA, LTD.)	Case No. 07-10888 (KG)
)	
Debtor.)	
)	

**APPELLEE WESTERNBANK PUERTO RICO'S COUNTER-STATEMENT OF ISSUES
AND COUNTER-DESIGNATION OF RECORD WITH RESPECT TO
APPELLANT JACK KACHKAR'S APPEAL OF FINAL POSTPETITION
FINANCING ORDER ENTERED BY THE BANKRUPTCY COURT ON APRIL 3, 2008**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Westernbank Puerto Rico (“Westernbank”) submits this counter-statement of the issues on appeal and counter-designation of additional items to be included in the record on appeal in connection with the appeal filed by Jack Kachkar (“Kachkar”) from an order of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), dated April 3, 2008, titled “Final Order (I) Authorizing The Use Of Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection To Westernbank Puerto Rico As The Prepetition Lender, (III) Authorizing Further Postpetition Financing, (IV) Granting Liens And Superpriority Administrative Expense Status Pursuant To 11 U.S.C. §§ 363 And 364, And (V) Modifying Automatic Stay Pursuant To 11 U.S.C. § 362” (D.I. 121), and respectfully submits:

COUNTER-STATEMENT OF ISSUES ON APPEAL

A. Does section 364(e) of the Bankruptcy Code moot an appeal from a final order of the Bankruptcy Court authorizing an extension of credit in good faith to a trustee that is fully disbursed and used by the trustee?

B. In the circumstances of authorized and disbursed good faith extensions of credit to a chapter 11 trustee which were not stayed, may this Court affect the validity of any

debts incurred by the chapter 11 trustee or the priority, liens and protections granted to the lender?

C. Did the Bankruptcy Court commit a plain error of law or an abuse of discretion in authorizing the chapter 11 trustee of Inyx USA, Ltd. to incur secured debt obligations pursuant to section 364 of the Bankruptcy Code and to expend the proceeds of the credit extended in accordance with the provisions of the Final Order?

D. Is an interim order for debtor in possession financing that has been denied a finding of good faith subject to revision or modification by the Bankruptcy Court?

COUNTER-DESIGNATION OF RECORD

Westernbank counter-designates the following items to be included in the record on appeal. Each designated item includes any exhibits to such item.

1. Emergency Motion Of Westernbank Puerto Rico For Adequate Protection And To Prohibit Use Of Cash Collateral, dated July 9, 2007 (07-10887, D.I. 17).

2. Objection By Westernbank Puerto Rico To The Debtors' Motion: (I) To Authorize Secured Postpetition Financing; (II) To Grant A Super-Priority Administrative Claim And Postpetition Liens; And (III) To Schedule A Final Hearing, dated July 10, 2007 (07-10887, D.I. 26).

3. Transcript of Hearing held on July 11, 2007 before the Honorable Kevin Gross (07-10887, D.I. 191).

4. Order Granting Motion For Adequate Protection, dated July 12, 2007 (07-10887, D.I. 46).

5. Supplemental Objection Of Westernbank Puerto Rico To Debtors' Motion For Final Approval Of Secured Postpetition Financing And Related Relief, dated July 24, 2007 (07-10887, D.I. 74).

6. Notice of Hearing on Final Order (I) Authorizing Secured Postpetition Financing; And (II) Granting a Super-Priority Administrative Claim And Postpetition Liens In Favor Of Dr. Jack Kachkar, dated February 5, 2008 (D.I. 54).

7. Objection To Proposed Final Order Authorizing Debtor In Possession Financing Under Section 364(c) Of The Bankruptcy Code By Jack Kachkar, dated February 25, 2008 (D.I. 66).

8. Chapter 11 Trustee of Inyx USA, Ltd.'s Limited Objection to Entry of Final Order (I) Authorizing Secured Postpetition Financing; and (II) Granting a Super-Priority Administrative Claim and Postpetition Liens in Favor of Dr. Jack Kachkar, dated February 25, 2008 (D.I. 68).

9. Response of Sanofi-Aventis US to Motion for Entry of Final Order (I) Authorizing Secured Postpetition Financing and (II) Granting a Super-Priority Administrative Claim and Postpetition Liens in Favor of Dr. Jack Kachkar and Reservation Of Rights, dated February 25, 2008 (D.I. 69).

10. Amended Notice of Agenda of Matters Scheduled for Hearing on March

4, 2008 at 10:00 A.M., dated March 3, 2008 (D.I. 76).

Dated: May 5, 2008
Wilmington, Delaware

/s/ Steven K. Kortanek

Francis A. Monaco (Del. Bar No. 2078)
Steven K. Kortanek (Del. Bar No. 3106)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801
Telephone: (302) 252-4363
Facsimile: (302) 661-7728

- and -

Harvey R. Miller
Shai Y. Waisman
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Westernbank Puerto Rico